

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
APPENDIX**



# 75-7654

In The  
**United States Court of Appeals**  
For The Second Circuit

CLARENCE H. McSHAN,

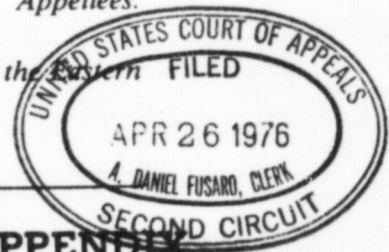
*Appellant,*

vs.

OMEGA LOUIS BRANDT ET FRERE, S.A. and SOCIETE  
SUISSE POUR L'INDUSTRIE HORLOGERE  
MANAGEMENT SERVICES, S.A.,

*Appellees.*

On Appeal from the United States District Court for the Eastern  
District of New York



## APPELLANT'S SUPPLEMENTAL APPENDIX

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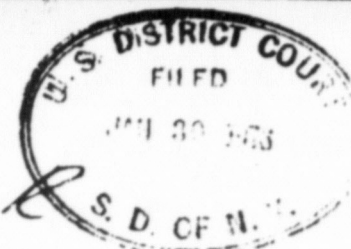
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STIPULATION (Filed January 30, 1976) 1sa  
UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



UNITED STATES OF AMERICA,

Plaintiff,

v.

NORMAN M. MORRIS CORPORATION,  
NORMAN M. MORRIS ASSOCIATES, INC.,  
OMEGA LOUIS BRANDT ET FRERE S. A.,  
CHS TISSOT ET FILS S.A., AND SOCIETE  
SUISSE POUR L'INDUSTRIE HORLOGERE  
MANAGEMENT SERVICES S.A.,

Defendants.

Civil Action No. 76 Civ. 475

Filed: January 30, 1976

Entered:

STIPULATION

It is stipulated by and between the undersigned parties,  
by their respective attorneys, that:

(1). A final judgment in the form hereto attached  
may be filed and entered by the Court, upon the motion of  
any party or upon the Court's own motion, at any time after  
compliance with the requirements of the Antitrust Procedures  
and Penalties Act (15 U.S.C. § 16), and without further  
notice to any party or other proceedings, provided that  
plaintiff has not withdrawn its consent, which it may do at  
any time before the entry of the proposed final judgment by  
serving notice thereof on defendants and by filing that  
notice with the Court.

(2). In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this stipulation, this stipulation shall be of no effect whatever and the making of this stipulation shall be without prejudice to plaintiff and defendants in this and any other proceeding.

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GERARD MANDELBAUM

By:

Gerard Mandelbaum  
Attorney for Defendants  
Omega Louis Brandt et Frere S.A.  
CHS Tissot Et Fils S. A.  
Societe Suisse Pour L'Industrie  
Horlogere Management Services S. A.

VERNER, LIIPFERT, BERNHARD, McPHERSON AND ALEXANDER

By:

Ronald D. Goodman  
A member of the firm  
Attorneys for Defendants  
Norman M. Morris Corporation  
Norman M. Morris Associates, Inc.

STIPULATION APPROVED FOR FILING

Dated:

U. S. D. J.



FINAL JUDGMENT (Filed January 30, 1976)

3sa

UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

NORMAN M. MORRIS CORPORATION,  
NORMAN M. MORRIS ASSOCIATES, INC.,  
OMEGA LOUIS BRANDT ET FRERE S.A.,  
CHS TISSOT ET FILS S.A., AND SOCIETE  
SUISSE POUR L'INDUSTRIE HORLOGERE  
MANAGEMENT SERVICES S.A.

Defendants.

Civil Action No.

Filed: January 30, 1976

Entered:

FINAL JUDGMENT

Plaintiff, United States of America having filed its Complaint herein on January 30, 1976 and defendants having submitted themselves to the jurisdiction of this Court, and plaintiff and defendants, by their respective attorneys having consented to the entry of this Final Judgment, without trial or adjudication of any issue of fact or law herein and without this Final Judgment constituting evidence or admission by any party with respect to any such issue:

NOW, THEREFORE, before the taking of any testimony and without trial or adjudication of any issue of fact or law herein and upon consent of the parties hereto, it is hereby

ORDERED, ADJUDGED AND DECREED as follows:

This Court has jurisdiction of the subject matter of this action and of the defendants with respect to this action, this Final Judgment and all proceedings hereunder, and of the plaintiff. The Complaint states a claim upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Act, as amended (15 U.S.C. § 1).

## II

As used in this Final Judgment:

(A) "Person" shall mean any individual, corporation, partnership, association, firm or other business or legal entity;

(B) "Watch" shall mean any timing mechanism designed to be worn or carried on an individual, including the movement with or without a case, and any case, part or component of or for such mechanism, manufactured or distributed by any defendant or defendants; and when related to any trademark associated with such a mechanism, any bracelet, strap, band, chain buckle, box, case or accessory manufactured or distributed by any defendant or defendants; and

(C) "United States" shall mean the United States of America, its territories, possessions, and other places under the jurisdiction of the United States.

## III

The provisions of this Final Judgment shall apply to each defendant and to each of its officers, directors, agents-at-law, employees, affiliates, subsidiaries, successors and assigns,



No information obtained by the means provided in this Section VIII shall be divulged by any representative of the Department of Justice to any Person other than duly authorized representatives of the Executive Branch of the United States, except in the course of legal proceedings in which the United States is a party or for the purpose of securing compliance with this Final Judgment or as otherwise required by law.

IX

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction of or carrying out of this Final Judgment, for the amendment or modification of any provision contained herein, for the enforcement of compliance therewith, and for the punishment of the violation of any of the provisions contained herein.

X

Entry of this Final Judgment is in the public interest.

~~UNITED STATES DISTRICT JUDGE~~

Dated:



JUDGE OWEN

COMPLAINT (Filed January 30, 1976)  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

6sa

76 CIV. 495

UNITED STATES OF AMERICA,

Plaintiff,

v.

Civil Action No.

Filed:

NORMAN M. MORRIS CORPORATION,  
NORMAN M. MORRIS ASSOCIATES, INC.,  
OMEGA LOUIS BRANDT ET FRERE S.A.,  
CHS TISSOT ET FILS S.A.,  
SOCIETE SUISSE POUR L'INDUSTRIE  
HORLOGERE MANAGEMENT SERVICES S.A.

Defendants.

COMPLAINT

The United States of America, plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this civil action to obtain equitable relief against the above-named defendants, and complains and alleges as follows:

I

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted under Section 4 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. §4), commonly known as the Sherman Act, in order to prevent and restrain the continuing violation by the defendants, as hereinafter alleged, of Section 1 of the Sherman Act, as amended (15 U.S.C. §1).

2  
JAN 31 1 27 PM '76

2. Defendants Norman M. Morris Corporation and Norman M. Morris Associates, Inc., are found and transact business in the Southern District of New York. Defendants Omega Louis Brandt Et Frere S.A., Chs Tissot Et Fils S.A., and Societe Suisse Pour L'Industrie Horlogere Management Services, S.A., transact business in the Southern District of New York under Section 12 of the Clayton Act (15 U.S.C. § 22) and under Section 302 of the Civil Practice Law and Rules of the State of New York (N.Y.C.P.L.R. McKinney, 1972) in the following respects:

- (a) by the maintenance and effectuation of continuing agreements, executed within the Southern District of New York, which have a substantial effect on the economy of the Southern District of New York, and are alleged as violations of the Sherman Act in this complaint, with defendants Norman M. Morris Corporation and Norman M. Morris Associates, Inc., both of which have their principal places of business in the Southern District of New York;
- (b) by the continuing importation into the Southern District of New York for resale within the Southern District of New York of certain products that are the subject matter of the aforementioned agreements, the sale of which has a substantial effect on the economy of the Southern District of New York; and
- (c) by the transaction of business in the Southern District of New York, relating to the aforementioned agreements, by officials of Omega Louis Brandt Et Frere S.A., Chs Tissot Et Fils S.A., and Societe Suisse Pour L'Industrie Horlogere Management



Services S.A. who have physically entered the Southern District of New York for this purpose.

8sa

## II

### DEFINITION

3. As used herein, the term "watch" means any timing mechanism designed to be worn or carried on an individual including the movement with or without a case, and any case, part or component of or for such a mechanism, and when related to any trademark associated with such a mechanism, any bracelet, strap, band, chain, buckle, box, case or accessory.

## III

### THE DEFENDANTS

4. Norman M. Morris Corporation (hereinafter called Morris) is named a defendant herein. Morris is a corporation organized and existing under the laws of the State of New York with its principal place of business at 301 East 57th Street, New York, New York. Pursuant to written agreement with Omega Louis Brandt Et Frere S.A., Morris is the only manufacturer-authorized distributor for Omega watches in the United States. Morris imports watches from Switzerland for distribution to domestic retail jewelers and department stores with the former accounting for 90 percent of its more than two thousand customers.

5. Norman M. Morris Associates, Inc., (hereinafter called Associates) is named a defendant herein. Associates is a corporation organized and existing under the laws of the State of New York with its principal place of business at 301 East 57th Street, New York, New York. Pursuant to written agreement with Chs Tissot Et Fils S.A., Associates is the only manufacturer-authorized distributor for Tissot watches in the United States. Associates imports watches

95a  
from Switzerland for distribution to approximately 1,600 domestic retail jewelers and department stores. Defendant Morris and defendant Associates are under the common control of members of the Norman M. Morris family.

6. Omega Louis Brandt Et Frere S.A. (hereinafter called Omega) is named a defendant herein. Omega, a wholly-owned subsidiary of Societe Suisse Pour L'Industrie Horlogere S.A., is a corporation organized and existing under the laws of the Confederation of Switzerland. Omega manufactures watches under the trademark Omega and sells them worldwide. Its principal office and place of business is located in Bienne, Switzerland.

7. Chs Tissot Et Fils S.A., (hereinafter called Tissot) is named a defendant herein. Tissot, a wholly-owned subsidiary of Societe Suisse Pour L'Industrie Horlogere S.A., is a corporation organized and existing under the laws of the Confederation of Switzerland. Tissot manufactures watches under the trademark Tissot and sells them worldwide. Its principal office and place of business is located in Le Locle, Switzerland.

8. Societe Suisse Pour L'Industrie Horlogere Management Services S.A., (hereinafter called SSIH Management), is named a defendant herein. SSIH Management is a corporation organized and existing under the laws of the Confederation of Switzerland and is a wholly-owned subsidiary of Societe Suisse Pour L'Industrie Horlogere S.A. (hereinafter called SSIH) which is also a corporation organized and existing under the



laws of the Confederation of Switzerland. SSIH is a holding company which, through its subsidiaries Omega and Tissot manufactures and sells watches throughout the world. In addition to Omega and Tissot, SSIH, through its subsidiaries, manufactures and markets watches under the brand names of Hamilton, Lanco, Aetos, Lemania and Rayville. SSIH Management provides management services to SSIH and its subsidiaries in connection with the worldwide sale and distribution of Omega and Tissot watches. The principal office and place of business of SSIH Management is located at Rue Centrale 63, Ch. 2501, Bienna, Switzerland.

#### IV

#### NATURE OF TRADE AND COMMERCE

9. The watch industry in the United States consists of the manufacture, importation, and sale of watches for domestic and export use. Conventional watches contain a jewel-lever mechanism utilizing jewel bearings which are made from synthetically-fabricated jewels which are used primarily for the purpose of reducing friction. Non-conventional watches are solid-state, quartz, or electronic mechanisms which do not require a jewel-lever mechanism.

10. A four-level hierarchy of types of watches in terms of value and price may be identified. The first level is inexpensive watches selling at a retail value

approximately between \$10 and \$100. Many watches of this level are conventional and have fewer than 17 jewel movements. The second level is medium-priced watches with a retail value approximately between \$100 and \$1,000. The conventional watches in this category tend to have 17 jewel movements. The third level is higher-priced watches ranging in retail value approximately between \$1,000 and \$10,000. The conventional watches in this category tend to have 21 or 24 jewel movements. Recently, non-conventional watches have achieved a significant increase in sales at this level. The highest level are luxury watches often encased in fine jewelry which retail for in excess of \$1,000. Tissot watches are generally medium-priced. Omega watches are generally higher-priced.

11. Over 80 percent of watches and movements imported into the United States are purchased from firms located in Switzerland. SSIH, through its wholly-owned subsidiaries, constitutes one of the largest of such firms. Its Omega and Tissot watches have established a significant market position for many years throughout the world including within the United States.

12. In 1972, total sales of watches in the United States amounted to in excess of an estimated 27 million units valued in excess of \$400 million. Of these units, approximately 37 percent were manufactured in the United States and 53 percent were imported from Switzerland.



13. In 1973, Omega sold watches to Morris, which Morris sold to retail jewelers and department stores for approximately \$18 million. In 1973, Tissot sold watches to Associates, which Associates sold to retail jewelers and department stores for approximately \$2 million.

14. Defendants Morris and Associates purchase Omega and Tissot watches f.o.b. the Omega and Tissot factories in Switzerland where the watches are manufactured. They are generally imported into the United States at the Port of New York for distribution by Morris and Associates to United States retailers. Throughout the period of time of the violation herein alleged, the defendants have continuously shipped and sold Omega and Tissot watches in the interstate and foreign commerce of the United States.

V

VIOLATION ALLEGED

15. Beginning in at least 1973, the exact date being unknown to the plaintiff, and continuing up to and including the date of the filing of this complaint, the defendants have been engaged in a combination and conspiracy in unreasonable restraint of the aforesaid interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act. The violation is continuing and will continue unless the relief hereinafter prayed for is granted.

16. The unlawful combination and conspiracy has consisted of a continuing agreement, understanding, and concert of action among the defendants, the substantial terms of which are:

- (a) that the defendants will allocate customers in the sale of Omega and Tissot watches within the United States, and more particularly that sales to United States duty-free shops will be allocated to defendants Omega, Tissot and SSIH Management; and
- (b) that the defendants will work toward an elimination of the importation into and sale within the United States of Omega and Tissot watches by third parties; and
- (c) that to induce defendants SSIH Management, Omega and Tissot to work toward such elimination of importation and sales within the United States, defendants Morris and Associates will sell Omega and Tissot watches, respectively, only within a designated marketing area -- the United States -- and will refrain from selling such watches outside this designated area.

17. In effectuating and carrying out the aforesaid combination and conspiracy, the defendants have done those things which, as herein alleged, they conspired and agreed to do,

#### VI

#### EFFECTS

18. The violations alleged herein have had the following effects, among others:



- (a) competition in the sale of Omega and Tissot watches among the defendants has been suppressed and restrained;
- (b) the importation of Omega and Tissot watches into the United States has been suppressed and restrained; and
- (c) consumers have been denied the benefits of free and open competition in the purchase of Omega and Tissot watches.

## VII

### PRAYER

WHEREFORE, the plaintiff prays:

1. That the Court judge and decree that the defendants have engaged in an unlawful combination and conspiracy in restraint of the aforesaid trade and commerce in violation of Section 1 of the Sherman Act.

2. That the defendants, their officers, directors, successors, and agents, and all other persons, including but not limited to affiliates and subsidiaries, acting or claiming to act on their behalf, be enjoined and restrained in any manner from, directly or indirectly, continuing, maintaining, effectuating or renewing the combination and conspiracy hereinbefore alleged, and from engaging in any other combination or conspiracy having a similar purpose or effect and from adopting or following any practice, plan, program or device having similar effects.

3. That defendants SSIH Management, Omega and Tissot be directed to advise their distributors throughout the world that they may resell, directly or indirectly, Omega and Tissot watches into or from the United States to such persons and at such prices as the distributors shall choose.

4. That the defendants be enjoined from entering into any combination or conspiracy to restrain or impede, directly or indirectly, any distributor or dealer from selling Omega or Tissot watches in the United States to such persons and at such prices as they shall choose.

5. That, pursuant to Section 5 of the Sherman Act (15 U.S.C. § 5), this Court order summonses to be issued to those of the defendants as to whom such an order may be appropriate, to appear herein and to defend each allegation contained in this complaint and to abide by and perform such acts, orders, and decrees, as the Court may make in the premises.

6. That the plaintiff have such other and further relief as the nature of the case may require and the Court may deem just and proper.

7. That the plaintiff recover the costs of this suit.

*Thomas E. Kauff*  
THOMAS E. KAUFF  
Assistant Attorney General

*Baddia J. Rabbin*  
BADDIA J. RABBIN

*John Davidson*  
JOHN DAVIDSON  
Attorneys, Department of  
Justice

*Douglas H. Rosenthal*  
DOUGLAS H. ROSENTHAL

*Robert E. Williams*  
ROBERT E. WILLIAMS

Attorneys, Department of  
Justice



A 202 Affidavit of Personal Service of Papers  
COURT OF APPEALS  
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

CLARENCE H. MC SHAN,  
Appellant.

- against -

OMEGA LOUIS BRANDT ET FRERE S.A.,  
AND SOCIETE SUISSE POUR L'INDUSTRIE  
HORLOGERE MANGEMENT SERVICES, S.A.,  
Appellees.

Index No.

Affidavit of Personal Service

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

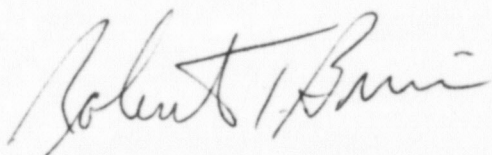
I, Victor Ortega, being duly sworn,  
depose and say that deponent is not a party to the action, is over 18 years of age and resides at  
1027 Avenue St. John, Bronx, New York

That on the 19th day of April 1976 at 230 Park Avenue, New York New York 10017

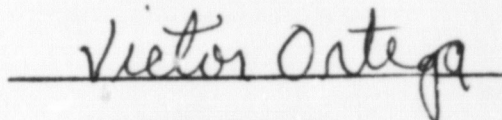
deponent served the annexed <sup>Supplemental</sup> Appendix ~~Brief in Support of~~ Letter upon

Shenier & O'Connor  
the Attorneys in this action by delivering a true copy thereof to said individual  
personally. Deponent knew the person so served to be the person mentioned and described in said  
papers as the herein,

Sworn to before me, this 19th  
day of April 1976



ROBERT T. BRIN  
NOTARY PUBLIC, State of New York  
No. 31-0418950  
Qualified in New York County  
Commission Expires March 30, 1977

  
VICTOR ORTEGA